

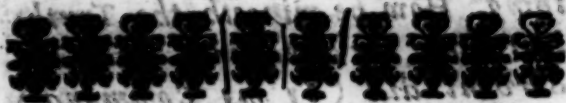
A
REPLY
TO
Sr. Thomas Danwaring's
ANSWER
TO MY
TWO BOOKS.

Written by **Sr. Peter Leppesfer, Baronet,**
Anno Domini, 1675.

The Second REPLY.

Together with the Case of *Amicia*
truly Stated.

LONDON,
Printed in the Year, 1676.



THE
P R E F A C E
TO THE
R E A D E R.

I Received on the 13th. of April, 1675. a very strange kind of Book from Sir Thomas Manners, then delivered unto me by his Servant; wherein I expected a Book of Arguing to the point of the Controversie between us: But behold a book of Rail- ing, catching (as his usual manner is) at every small impertinent thing.

That I may the sooner come to the Book it self, I shall observe

To the Reader.

only out of his Epistle, this one thing, How he minceth the Truth, in telling the Reader --- that my Servant did (by my Command) signifie unto him in a Letter, that I would write again, and this before Sir Thomas had Printed one word of his Reply: So that if he find me thus stumbling at the first, it is well if he do not take me off Tripping before I come to my Fournes end.

Whereunto I say that he deals not clearly in his words, and declareth not the whole Truth: For it is true, that I did command my Servant to write unto him; but what did I command him to write Was it barely that I would then write again? No: but to let him know, that I had then found some new Precedents which (I conceived) would clear the point between us, and came to my knowledge since I had published my Answer, of which I thought good to give him timely notice, that I would add them to my Answer already Printed, which were

To the Reader

were omitted therein; and that be-
fore his Reply was Printed, as Sir
Thomas here confesseth: This was
rather an amendment of my former
book, then writing againe denovoz;
for as yet he had published no book
against it, but this part of the
Truth he conceales; and if my Ser-
vant writ otherwise than to this
effect, I utterly disown it to be
written by my command: But be-
fore I could get my Addenda Print-
ed, he published a Reply to my
Answers wherein were so many
Crimes charged upon me, that I was
forced to a Vindication of myself,
which I did then put into my Ad-
denda, yet not so fully as I might
have done: See my Addenda, p. 8.
and also p. 27.

And whatsoever I have also writ-
ten more, then what I first intended
and declared, I have been forced
thereunto in my own defence.

And so I will now briefly come
to his Book, and hope to shew clear-
ly who Trips most in the Journey,
he or I; and wherein I do Trip, it
shall

To the Reader:

shall be readily confest: I think mine will not be found many, nor material to the main point; but I believe his will be found Fundamental Errors: And I could wish that Sir Thomas would as freely confest his Trips as I shall confest mine, then the whole business would soon be at an end.

And herein I shall endeavour all along to avoid all obloquies, where-with he adounbeth as much as I can; for Calumnies and Slanders will find no place among Wise and Good Men, and are ever inconsistent with those excellent Christian Graces of Humility and meekness.

Mobberly,
May the 18th. 1675.



A Second Reply.

Pag. 1. Of his Answer to my
two Books.



Ere he saith, that I
affirm several times,
that *Glanvil* saith
that Lands may be
given with any Wo-
man in *liberum ma-
ritagium* : where-
as he saith only, they may be given
cum quâlibet muliere in maritagium.

My Reply.

I did, and do yet affirm it ; and
have proved it too ; see pag. 54. of
my former Reply, which yet he hath

B

not

not answered : nor do I believe that he can rationally answer my Argument there: For though *Glanvil* hath not these very words---
Lands may be given with any Woman in liberum maritagium]; yet he saith it by Consequence, drawn clearly out of his words, *lib. 7. cap. 18.* which is the same in effect.

Nor doth Sir *Thomas* repeat *Glanvil's* words aright; and yet he is ready upon all occasions to tax me with the like : the words of *Glanvil*, *lib. 7. cap. 1.* are----*quilibet liber homo, terram habens, quandam partem terre sua cum filiâ suâ, vel cum aliquâ aliâ qualibet muliere, potest dare in maritagium---* &c. not barely *cum qualibet muliere.*

Pag. 2. *Of his Answer to my two Books.*

Here he saith, I tell him that I have proved *Geva* to be a Bastard out of an Historian Contemporary; by which *Ordericus Vitalis* is meant, and

and yet *Ordericus* saith no such thing.

My Reply.

'Tis true, I said so, and have proved it too: See my Answer to his Defence of *Amicia*, pag. 34, 35. for though he hath not these very words [*Geva is a Bastard*], yet by sure Consequence it follows out of the words of *Ordericus*, that she was a Bastard, which is all to one effect; and here is another trip of a fallacy in Sir *Thomas*.

Pag. 2. *Of his Answer to my two Books.*

1. Here he also saith, that I affirm the Common Law is now altered otherwise than by Act of Parliament, without quoting any Author.

2. And also that I brag of several Precedents where Lands were given in free Marriage with Bastards; and yet I prove not these necessary words of *liberum marita-*

gium (as the Lord *Cook* calls them) were used in any of those grants, or that any of those Persons, with whom such Lands were given, were Bastards.

My Reply.

Here is another Trip of Sir *Thomas*; for I have quoted the Lord *Cook* himself in several Cases for it: See my Answer to his *Defence of Amicia*, pag. 23, 24, 25, 26. and yet he is not ashamed to say here, I quoted no Author for it: And I could yet produce a number of Cases more, wherein the Law is altered without any Act of Parliament, if it were necessary.

2. To the Second: I produced those ancient precedents to show, that those words [*in liberum maritagium*] were not anciently so necessary in grants of free Marriage, as the Lord *Cook* would now have them to be; and then Sir *Thomas* saith, that I have not proved any of those Persons with whom such Lands were given (in free Marriage)

age) were Bastards : *Sit liber judex*, as to that of *Geva* : See also my former Reply, pag. 38. where *Joan Princess of Wales* is clearly proved to be a Bastard by the Testimony of most of our Historians ; but none saying she was a lawful Daughter, and that she had Lands given her in free Marriage by King *John* her Father : See my Advertisement to the Reader, at the end of my two said Books ; also my *Addenda*, pag. 3, 4. and my former Reply, pag. 25.

Pag. 3. Of his Answer to my two Books.

Here he saith, I tell him *Lemellyn* Prince of *North-Wales* was Divorced from his Wife *Joan*, for which I can neither shew Author, nor Record:

My Reply.

I do not positively affirm it : the words in my former Reply, pag. 44.

are these—if she were Re-married to *Audley*, anno 14. *Hen.* 3. then it is a sure Argument that she was Divorced; and whether she was so Married or no, 14. *Hen.* 3. let the Record Vouched by *Vincent*, be the Judge.

Here is another Trip of Sir *Thomas*; for he saith, that I can neither shew Author, nor Record: indeed *Vincent* doth not say she was Divorced; but he saith, she was Re-married to *Audley*; and so by consequence she must needs be Divorced, *Lewellyn* being then alive.

But I have now published an Advertisement to the Reader at the end of my two said Books, where I have set forth the Copy of that Record; and do find that *Vincent* hath clearly mistaken the Record; for it proves *Robert de Audley* did Marry *Joan*, Daughter of *Richard de Landà*, but nothing at all of any Marriage with *Joan* Princess of *Wales*.

Yet nothing hinders, but she might

might have been Divorced from *Lewellyn*, being taken in Adultery with *William de Brews*; and if Sir *Thomas* will allow the Note of Dr. *Powel* to be Authentical herein, pag. 315. of his Notes upon the Welsh History, *Lewellyn* had another Wife after *Joan*, called *Eva*, Daughter of *Fouk de Breant*, but had no Issue by her, as he saith; which could not be without a Divorce, unless we suppose *Lewellyn* Married after the death of *Joan*, for he survived not *Joan* above two or three years; and then we find him Diseased with the Palsey, and in a dying condition, anno 1237. See *Mat. Paris*, pag. 437. and therefore probably, if he were so Re-married at all, it was before that declining state of his: But yet I will not positively affirm that *Joan* was Divorced.

Pag. 3. Of his Answer ibidem.

Here he saith, I have a fine way of Answering; for if I be prest o-

ver-much with any point of Law, then *I* will tell you of my own Authority, that the Law in such Particulars is clearly altered, though *I* cannot tell how, nor at what time.

2. If it be a Record that puts me too hard to it, then *I* conceive the Roll from whence the Deed is written, is mistaken in such and such words, and miswrit therein from the Original.

3. If out of any History you tell me any thing which *I* cannot Answer, then *I* will not suffer the words to be read as they ought to be Printed; but *I* will fanſie ſuch expreſſions as will beſt ſuit with my turn, and alſo diſparage the ſame History, although in thoſe matters *I* had formerly ſaid *I* did chiefly follow the ſame.

My Reply.

These are all nothing but Cavils; and whence these proceed, every man may judge.

1. Where do *I* ſay the Law is altered

tered on my own Authority, and do not prove it by other Authority? it is his mistake, and though *I* cannot tell when precisely, nor perhaps others neither, yet it is plain such particulars are altered, and such alterations are not made in a day, nor all at a time; for they must have a long time of common practice through the Nation, before it become a common Law; and at last becomes a Law by general consent and practice by degrees.

2. *I* never say the Roll is mistaken, but where it is mistaken; and *I* remember not that *I* say any Roll or Record at all is mistaken, save either that of (*Donarium*) which *I* conceived was mis-writ for (*Dotarium*); and it is ill chid of Sir Thomas (as we say Proverbially) when he himself conceives (*Donarium*) to be there mis-writ for (*Dovarium*) pag. 13. or else that of Bacon's Deed: See my Reasons in my *Adenda*, pag. 23. for rectification of which, *I* was promised a sight of the Original, but *I* could not obtain it.

3. The

3. The third is also a great mistake: for first, I have not seen any thing out of any History alledged, but what I have fully answered, as to the point in difference; nor do I hinder any words to be read as they ought to be Printed; but when there be plain errors in the Printing, and so proved to be errors by comparing sundry other good Authors to the contrary, as (*Hugh*) Earl of *Chester*, for (*Randle*) Earl of *Chester*, in the Welsh History, *sub anno* 1142. why may not I observe the error which Sir *Thomas* would bolster up by an erroneous Amendment, to ground several other gross errors and mistakes thereupon? It is most certainly a gross mistake either in the Printer or the Copy; and not mistaken for (*Hugh*, Son to the Earl of *Chester*), but for (*Randle* Earl of *Chester*):

And then to say I disparage the Welsh History, or Dr. *Powel*, is another mis-judging of me: all I said was this,----The Welsh History is not exactly composed throughout,
nor

nor proved by good Authority; and as I believe it true in many things, so it hath some grosse mistakes; and so are some of Dr. *Powels* Notes thereon full of errors, especially in his absurd Pedegree of the Earls of *Chester*, and in several other things: See my former Reply, *pa.* 94. And I believe every knowing man (who hath perused the same) will say as much: indeed there are few general Histories but may have some mistakes, and without disparagement too to the Author.

Certainly, here are three or four extraordinary Trips of Sir *Thomas*.

Now there is nothing material here, further to be taken notice of, till we come to his nineth page.

Pag. 9. Of his Answer to my two Books.

Here Sir *Thomas* saith that I misrecite his Argument; and that I say, that the Lord *Cook* saith those words [*in liberum maritagium*] are such words of art, and so necessarily re-

required, as they cannot be (understood) by words equipollent : so hard it is to get Sir Peter either to repeat or understand aright.

My Reply.

Parturiunt montes, nascetur ridiculus mus : He saith, it is a hard matter to get me repeat aright ; but for the repeating of those very words of the Lord Cook; see Sir Thomas Manwarings Law-Cases mistaken, pag. 3. pag. 10. and pag. 14. in all which places I have repeated them aright : So it is no hard matter to get me repeat aright ; but here indeed the word (understood) is miswrit for (express) pag. 4. of my former Reply; which shews it self to be a mistake in the writing; and the very sence here, would guide a man of reason into a rectification; but Sir Thomas will play at small game before he sit out.

And then he saith, I understand not aright : why so ? Because I do not say---by words equipollent, or amounting to as much. Oh

Oh profound and material point! as though equipollent, or amounting to as much, were not the same thing; or that there were more in the words (amounting to as much) than in the word (Equipollent): let him shew me the difference between them, if he can; save only one is a Lattin word, and the other English: so that when I had named the one, the other were not needful to be named.

Pag. 10. Of his *Answer to my two Books.*

Here he saith, I mistake very much, when I say---that Lands given in *maritagium*; *Habendum libere & quiete ab omni servitio versus Capitalet Dominum, de me & heredibus meis,---&c.* was a good grant in free Marriage, by the words of *Glanvil* in those Ages, and as good as *in liberum maritagium*): Why so? because *Glanvil* doth not there, or any where else, say that Lands may be given in free Marriage

age by those, or any other equipollent words, without using the words [*in liberum maritagium*]; and unless he saith this, he saith nothing for Sir Peter's purpose.

My Reply.

For this see pag. 54. of my former Reply, where I have proved it out of *Glanvils* words by sure consequence, which Sir Thomas hath not yet answered: *Sit Liber Index. Glanvil, lib. 7. cap. 18.*

'Tis true, those very words here mentioned by Sir Thomas, are not in *Glanvil*; but Lands granted *in maritagium*, free from all Service, &c. (saith *Glanvil*) was a grant in free Marriage; and by sure consequence implied there out of *Glanvil*, to be the words answerable to the words (*in liberum maritagium*), which makes clearly for Sir Peter's purpose against Sir Thomas; for such a grant (saith *Glanvil*) was a grant in free Marriage, without telling us that the words (*in liberum maritagium*) must be necessary.

cessarily used at all: So that Sir *Thomas* mistakes himself here very much, and not I.

Pag. 12, 13. Of his Answer to my two Books.

Here he writeth down *Saber de Quencyes* Deed, out of my Historical Antiquities.

In which Deed (saith he, pag. 13.) if *Donarium* were there mis-written for (*Dotarium*), it would not here signifie Marriage, but Dower; and he thinks also that the Transcriber probably did mistake (*Donarium*) for *Dovarium*; the *n* and *v* being anciently written alike: but he saith also, he got a friend carefully to examine the same in one of the Couchir-books in the Dutchy Office in *Grays-Inn*, and the word is there *Donarium*, without any mistake at all.

My

My Reply.

It is true, I did intrepert in *liberum Donarium* in that Deed, as meant of a Jointure in my Historical Antiquities, pag. 132. but upon better consideration I conceived it might be more properly interpreted here, and understood for free-marriage; in my former Reply, pag. 7, 8. and in my Book, stiled *Sir Thomas Manwarings Law-Cases Mistaken*, pag. 29. for finding *Dos* sometimes anciently taken for Marriage, and finding the word (*liberum*) added here unto it, I did conjecture it might have been mis-written in my Copy in *liberum Donarium*, for in *liberum Dotarium*: and so all one as to have said in *liberum maritagium*; and the rather for that we find very rarely the word in *liberum donarium* so applyed; nor do we usually say Lands are given in free Joynture, but in free Marriage.

But now it being in the Couchir-
 book in *liberum Donarium* without
 mistake, as Sir *Thomas* tells us, he got
 a Friend to examine it, it must
 needs be here interpreted for a free
 gift: for *Saher de Quency* Earl of
Winchester, grants to *Robert de*
Quency his Son and Heir four Man-
 nours, *ad dandum in liberum Do-*
narium Hawise Sorori Comitis
Cestrie, uxori ejusdem Roberti.
 This was soon after the Marriage;
 for she was now the Wife of *Robert*,
 and these Lands were given for a
 free gift to *Hawise* his Wife, which
 is all one as to have said for a free
 gift in Marriage to *Hawise*; and a
 free gift in Marriage, is all one as a
 gift in Free-marriage: add here-
 unto, that those four Mannors,
 given in *liberum donarium*, as afore-
 said, accrewed to the Heires of
Hawise, to wit, to *John Lacy*, Earl
 of *Lincoln*, in right of *Margaret*
 his Wife, Daughter and Heir of
 the said *Robert Quency & Hawise*:
 which by Law ought to descend up-
 on the Heirs of *Hawise*, being given

in free marriage: Whereunto also *Roger de Quency* (who succeeded Earl of *Winchester*, upon the death of the aforesaid *Robert de Quency*, his Elder Brother without Issue Male) released all his Right unto the Heirs of the said *Margaret*: See my Historical Antiquities, pag. 271. whereas had those Lands been given to *Hawise* in Dower or Joynture only, she could but have enjoyed them for her self, and not to her Heirs.

Life

But whether is the more proper interpretation thereof in this place, let Learned men judge; I will not contend about it. Yet whereas pag. 15. Sir *Thomas* would have the Reader to judge of my Integrity, because I did formerly interpret the words aforesaid to be understood of a Joynture, and now upon more serious deliberation conceive the same to be meant for a gift in free-marriage, or a free gift in marriage, having the word *liberum* joyned with it: I say it is hard to censure my integrity for it: for that is well

well known to all the County where we both do live; I shall make no comparisons, for those are odious, and savor of arrogancy.

Again, Sir *Thomas* hath committed another Trip, pag. 10. where he expoundeth Mr. *Glanvils* words (when he speaketh of gifts in frank-marriage) *cum aliquâ muliere*, to be meant [with some woman]: which words he misinterpreteth altogether; for it is there meant [with any Woman] not with some Woman: He hath the same errour in his Reply to my Answer, pag. 40.

#. Sir Thomas
tooke part
with the
Pamont in
the late
sign against
the Kings.

Pag. 16, 17. Of his Answer to my two Books.

Here he saith, I tell him how he proves by comparing the Age of *Bertred*, that *Agatha* could not be the Daughter of the Second *William de Ferrare*; wherein (saith he) I am pittifully mistaken, for he did goe about no such thing; but he did shew pag. 3, 4, 5. that *Joane*, Wife

of *Lewellyn* could not be the same *Joan* which King *John* had by *Agatha*.

My Reply.

O pretty Subterfuge ! hath he any proof at all here, that *Joan*, Wife of *Lewellyn* was not the same *Joan* which King *John* had by *Agatha* ; but all his proof there bottomed on the Age of *Bertred* ; which could not allow *Agatha* to be the Daughter of the Second *William de Ferrars* by *Bertred*'s Daughter ; so as to suppose *Agatha* to be old enough to have Issue that *Joan* by King *John*, and that *Joan* to be old enough to be Wife of *Lewellyn*, Anno. 1204. which is a false ground taken from *Vincent* : but *Speed* saith, *Agatha* was Daughter of *Robert de Ferrars*, and I agree *Vincent* to be mistaken therein : Let me see him prove the Princess of *Wales* to be no Daughter of *Agatha* by King *John* ; what he saith here, is nothing to the purpose : See my former Reply, p. 18.

Page 22. Of his Answer to my two
Books.

Here (after a long Oration, nothing at all material) he tells us—would any man think Sir Peter himself within a very few lines would be guilty of the like offence, which I unjustly charged him withal? and a little after—Sir Peter would distinguish between *maritagium*, and *maritagium Servitio obnoxium*; and say *maritagium* is two-fold, but doth not give the members of his distinction aright.

My Reply.

Here are two great Trips more of Sir Thomas, for I did neither charge him unjustly with that distinction, which any man may read in his book, nor am I guilty of the like offence, as he saith I am: Shew me, if he can, where I go about any such a distinction as he here mentioneth, or say marriage

is two-fold, and then give the members of my distinction so absurdly as he there hath done; I wonder he is so disingenious either to deny the one or affirm the other: See his Answer to my Addenda, pag. 7. and my former Reply thereunto, pag. 20, 21. I appeal to all Readers; and yet in the 19th. pag. of this Answer to my two books, he tells us, it is the want of my understanding which causeth me to blame him for what he there saith, and then runs on in a long harangue to no purpose, telling us that *maritagium-Servitio obnoxium* is the Elder Brother---&c.

Pag. 24. *Of his Answer to my two Books.*

Here he saith, that I indeed do tell him that those Mannors (*Budiford & Suttebele*) were given to the said *Lewellyn in libero maritagio*: But the Deed lately belonging to *Somerford Oldfield Esquire*, doth prove no such thing, but doth only prove

prove that the said *Lewellyn* did mistake himself, and did think that they were given him in free-marriage, when they were not so given.

My Reply.

Oh fine, a pretty Answer indeed! for though in the Deed it be said--- *Sicut Dominus Johannes Rex ei illi dedit in libero maritagio*] yet here (saith Sir *Thomas*) *Lewellyn* mistakes himself, and thought it was so given, when it was not: it is not in the Deed (*mihi dedit*) but (*illi dedit*), and by consequence could not be mistaken by *Lewellyn* only, if it were mistaken; but by all others also then present, and especially by the Writer of the said Deed: But whether was *Lewellyn*, and the Clerk that made the Deed, and all others then present, more like to know the truth hereof, then Sir *Thomas* now living 450. years after that Deed made: Every man may see the weakness of this Answer. Sure this may stand for a

Trip with a derry-down, but he hath so many of them, that I shall forget to count them all. Ere while *pag. 3.* when I am put hard to it, (saith he) then I say the Roll is mis-writ: Very well; but here he denys the very words of the Deed, and avers against a Record, and yet gives no reason for it neither.

What follows *pag. 26, 27, 28, 29.* are all tedious things according to his custom, and little or nothing to the point.

But *pag. 26.* and in other places else-where, when any thing is said by him, either not true, or not to the point, then it is my ignorance that runs me upon mistakes, that I cannot fathom what he or the Lawyers do say.

1. He saith, *pag. 26.* that if a man have Land given in free marriage with a Wife, he hath only *Custodiam terra cum uxore*, and therefore cannot dispose of those Lands to any Person from the right Heir.

2. So *pag. 28, 29.* he tell us that the Writ for the Livery of *Bndisford*

to *Lewellyn* runs in these words, —
quod Johannes Rex ei dedit in ma-
ritagium cum Johanna, &c. and
 (saith he) Livery would be need-
 less in a gift of free-marriage, and
 therefore concludes, it must be on-
 ly in *maritagio* given, not in *libero*
maritagio; and so *Lewellyn's* Deed
 to *John Scot* is mistaken; and be it
 what it will, it will work nothing
 in this case.

My Reply.

I. To the first: For what he
 saith, that according to the ancient
 Lawyers in those elder Ages, that
 Lands given with a Wife in free-
 marriage to a man, the Husband
 hath only the custody of such Lands
 with his Wife, and therefore can-
 not dispose of any of those Lands to
 any person from the right Heir by
 such a Wife.

Yet we see here, that *Lewellyn*
 did grant away *de facto* to *John* the
Scot, *Bndisford* in free-marriage
 with *Helen* his Daughter, about

1222. which Lands King *John* gave unto him in free-marriage, with *Joan* his Daughter, Mother of the said *Helen*, by what right we cannot now tell, whether by the consent of the right Heir by *Joan*, or other compensation else-where given; but certainly it was so given, and *Helen* was right Heir to her Mother *Joan*, after the death of *David* her Brother, without Issue.

2. To the second : As to the Writ of Livery concerning *Budiford*, running only *in maritagium*, it hinders nothing but that the grant to *Lewellyn* of *Budiford* might be *in libero maritagio*; as we see that of the Castle of *Ellesmere*, granted also to *Lewellyn* by King *John*, with his said Daughter *Joan* *in libero maritagio*, by expresse words : See the Deed at large in my Advertisement to the Reader, at the end of my Book, stiled *Sir Thomas Manwarings Law-Cases* Mistaken; and yet the Livery of *Ellesmere* saith only---*quod dedimus dilecto filio nostro Lewelino in maritagio*

ritagio filie nostra : See Sir Thomas Manwarings Answer to my *Addenda*, pag. 6. Now *maritagio* doth as well include free-marriage, as not free-marriage, according as the Deed runneth.

Pag. 30. Of his Answer to my two Books.

Here he saith, he thinks he can make good what he said of my Partiality (which yet he will not speak publickly) and that I will not be excused by that contradiction of mine; to wit, That admit I were never so much partial in what he chargeth me with (yet I hope what I have written, he finds it impartial to all, so far as I go or know) would this cure his uncivil expressions towards me in another thing? but he leaves out these last words of mine.

My

My Reply.

Let him find out a contradiction here if he can; but all his shifts and cavils cannot prevail to cover the truth concerning *Amicia*, and which with all his art he cannot solidly refute. So having done with this Trip, I proceed to the rest.

Pag. 32, 33. *Of his Answer to my two Books.*

Now he would fain justifie a former error of his, and shews me a Deed out of my own Book, pag. 143. (from which Book he fetcheth many things, but nothing will help his cause) In which Deed, *Randal*, Duke of *Brittain*, & Earl of *Chester* granted to *Andrew*, Son of *Mabil*, & to his Heirs, sundry liberties, &c. among which, it is there said, *— nec de querelâ aliquâ in civitate Cestrie, vel extrâ, respondeant in præsentia meâ, vel summi, Justitiæ mei :* & upon which he puts in the Margent a spe-

special mark thus (* Note) : and after he saith, Now let any Person judge whether there was not a chief Justice of *Chester* in those Elder Ages.

But before pag. 32. he tells us most learnedly, that the word *Iustitia* here, is of the *Masculine Gender*, and gives us a rule out of the *Grammer* for it----

Mascula nomina in a dicuntur multa Virorum, and was sometimes in those Elder Ages used for the Judge or Justice of *Chester*, which he believes I cannot deny.

My Reply.

No indeed, I cannot deny it ; but why used for the Judge or Justice of *Chester*, more than other Judges in those Ages? Surely it was Anciently used for any of our Judges : *Glanvil* mentioning the form of Original Writs, hath it thus----*quod sit coram me vel Iustitiis meis* : So also *Hoveden*, and other of our ancient Historians used

Capi.

Capitalis Justitia Anglie for the chief Justice of England : But *Bracton* compiling a Book of the body of our Law in Latin, under King *Henry* the third, he changed the word (*Justitiis*) into (*Justiciariis*) ; and setteth down the writs accordingly----*coram Justiciariis nostris* : Since which time, in all Writs and Commissions upon Record, they have been stiled *Justitiarum* : *Lamberds Eirenarcha, lib. i. cap. i.*

And then for his profound Observation, that *Justitia* is here of the Masculine Gender, according to the Rule...

Mascula nomina in (a) dicuntur multa virorum. Yet he hath left out three or four of the next words following, which might fitly have been added to that book of his---*Ut scriba, affecla, scurra, & rabula.* But now for the words of the Deed : It is certain, that here *Earl Randle* calls the Judge of *Chester*---my chief Justice; and the words of the Deed, before-mentioned, I conceive

ceive runs thus in *English*---That the said *Andrew* and his Heirs should not Answer concerning any Suit (or Complaint) entered in the City of *Chester*, or without, either in my presence, or in the presence of my chief Justice.

And it is a rare precedent (without a Parallel, I believe in this kind) that the Earl here calleth him---my chief Justice; undoubtedly for some reason here intended, and but accidentally neither; possibly in distinction from the Judges of his inferiour Courts: for certainly they were never called chief Justices of *Chester* in those Ages by common appellation, as at this day they be called; neither then were there more Judges of *Chester* than one at a time, nor doth this example prove it otherwise, nor is the Judge here stiled----Chief Justice of *Chester*; only the Earl here calls him---my Chief Justice, speaking as it were in his own person; nor will this at all excuse the error and vain glory of *Sir Thomas*, speaking
so

so of *Rafe Manwaring*, and calling him as at this day we call the Senior Judge of *Chester*; it was a Trip, it overslipt him; but he will seldom acknowledge any error.

Again, This Deed was made between the year 1188. and 1200. for all that while *Randle*, Earl of *Chester* assumed the Title of Duke of *Little-Brittain* in *France*, which Title we see he had given to him in this Deed: But it cannot be firmly collected that *Ralf Manwaring* was Judge of *Chester* at that very time when this Deed was made; for he is there subscribed by the name of *Ralf Manwaring* only, not stiled *Radulfo Manwaring Justiciario Cestria* there, as he is in many other Deeds, and as he and all others were usually stiled, while they were Judges; and what *Sir Thomas* would stretch to have it so out of my Historical Antiquities, it will not certainly follow out of my Notes, that *Ralf Manwaring* was Judge of *Chester* all that time, from 1188. till *Philip Orreby* was Judge there;

nor especially all the time, while *Randle* was Duke of *Brittain*; and therefore *Sir Thomas* cannot certainly conclude (as he doth, pag. 34.) that *Rafe Manwaring* was Judge at that very time, when that Deed was made.

Pag. 35. to pag. 41. are things not worthy my taking notice of, nor pertinent to the main point, and have all formerly in my other books been Answered by me over and over again, and therefore I shall here pass them by; although, if I would cavil (as *Sir Thomas* doth) at every pidling thing, I could find many errors therein.

Pag. 43. *Of his Answer to my two Books.*

Here he saith, he is very confident *Sir Peter* cannot prove, that persons who were under age, did then use to joyn with their Mothers, and to give away their Lands of Inheritance.

2. And then after a long harangue, and writing down of Mr. *Selden's* words, which I had before cited, he saith pag. 45. (which is all the Answer he gives to my Precedent that is material) that Earl *Richard* confirmed the Hyde of Land which *Droco de Andeleia* had given to *Abbingdon-Church*; and a little after, addeth—what is this to the Case of *Hugh Cyvelier*, who did pass away *Stivinghale* to the Bishop of *Chester*, and his Successors for ever?

My Reply.

I say it is the very self-same Case, one as the other: for Earl *Richard*, and Earl *Hugh* do both joyn with their respective Mothers, both under Age; but now forsooth the difference he would put is this, that the one confirms another man's grant, the other grants away certain Lands for ever I would fain know if a grant of Lands for ever by one under Age, and joyning with his Mother

Mother, be invalid ; why a confirmation of Lands, by one under age also, and joyning with his Mother, would not be invalid likewise ; but this confirmation of Lands for ever held firm, and the Lands continued to the Church of *Abbingdon* accordingly.

So we see how he doubts not but what is there said, will give all men satisfaction, without rendring any Reason at all of the difference in those two Cases.

And I am very confident Earl *Hugh* could not be twelve years old when he joyned with his Mother in the Grant of *Stivinghale* ; and if the grant were made about the year 1156. to wit, about two or three years after his Fathers death, I rather think that Earl *Hugh* was not above eight years old when he joyned in that Grant.

But certainly Sir *Thomas* is far wide when he saith, pag. 45. that Earl *Hugh* was old enough to take *Melyeneith-Castle*, anno. 1142. or that he was 23. years old, Anno.

D 2 1153.

1153. in which year his Father dyed: most absurd, and without any ground at all.

But since I writ this second Reply, I have received a sure Record that proves Earl *Hugh* could not be above three or four years old at the death of his Father, *Anno 1153.* and will lay asleep for ever all those false suppositions of Earl *Hugh's* Age; whereof see more in my *Perratio ad Lectorem*, at the end of this my second Reply.

Pag. 46. Of his Answer to my two Books.

Here he tells the Reader, that I gave him a Pedegree of the Barons *de Monte alto*: In which I make the first *Robert de Monte alto* (who I said lived in King *Stephen's* time) to have Issue, two Sons, *Rafe* and *Robert*, who were afterwards successively Stewards of *Cheshire*; all which (saith he) is certainly true: [I could wish he would as ingeniously confess all other truths alledged

ledged by me]; and then he writeth out a Deed of *Hugh Cyveliok*, Earl of *Chester*, out of my Historical Antiquities; whereunto *Robertus Dapifer de Monte-alto* was a Witness.

1. And then *pag. 48.* he saith, this must needs be the first *Robert de Monte-alto*: and if this Deed of Earl *Hugh* was made immediately before the death of this *Robert*, then Earl *Hugh* was a great deal elder than his Wife *Bertred*: (why so?) For (saith he) though the said *Robert* did live something longer than Sir *Peter* doth take notice of, yet he thinks it cannot be proved that he was living any considerable time after *Eustace* (who was Witness to the Grant of *Stivinghale*); and he knows no reason why we should conclude *Eustace* was slain immediately after he was a Witness to the other Deed, or that this *Robert* dyed presently after he was a Witness to this Deed.

2. He saith, *pag. 49.* that he thinks it will appear that this Deed

was made in King *Stephen's* time; for had it been made when *Henry* the Second was King, it would not have been here said—*sicut fuit tempore Henrici Regis*; but *sicut fuit tempore Henrici Primi*; or else here would have been some other words used, to distinguish King *Henry* the first from the then King.

Pag. 49. Now King *Stephen* dying, 1154. and *Bertred* not born till 1157. it will from this Deed be clear, that if the said *Hugh* had sealed the other Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the least 24. years older than *Bertred* his Wife.

My Reply.

Is not here a long Prose of his running all upon ifs and ands, without the least ground of truth?

1. To the first: I do remember that I have seen some proof that the first *Robert de Monte-alto* (as he calls him) was living 17. *Stephani*:
what

what then? why should we conclude (saith he) that *Eustace* was slain immediately after he was a Witness to the one Deed, or that *Robert* dyed presently after he was a Witness to this other Deed?

Is not here pittiful weak reasons to bottom on? we find *Eustace* slain Anno. 1157. So *Stow*, and other Historians: as to *Robert de Monte-alto* aforesaid, I conceive he survived *Hugh Cyvelioc*: I have not yet seen any thing to induce me to think he dyed before Earl *Hugh*; and this Deed of Earl *Hugh* to the Nuns of *Bolinton*, I believe was made far in the Raighn of King *Henry* the Second, nor can he give any reason at all to the contrary, and we find not *Rafe de Monte-alto* a Witness, till *Randle Blundevil's* time, and that must be either in King *Richard* the First's Raighn, or towards the very end of *Henry* the Second at soonest.

2. To the second: Let him prove this Deed to be made in King *Stephen's* time, and I will burn my

book: as to his reason of distinguishing of one King *Henry* from another, how many times do we find mention of the *Henrys* in old Charters, without distinguishing at all? Sometimes they are distinguished, and sometimes not; but not adding the word of *Henrici Regis nunc*, shews clearly it is meant of *Hen. 1.*

3. To the third: As he proves nothing from the Deed, nor when it was made, so his ifs signifie nothing; for Earl *Hugh* was certainly a Child under age, when he joyned with his Mother in the Deed of *Stivingbale*.

And his ifs are very pretty, if Earl *Hugh* made this Deed to the Nuns of *Bolinton*, immediately before the death of *Robert de Monte-alto* aforesaid; and then you must take his other (if) too----if ~~this~~ this Deed was made in King *Stephen's* time, and then you must take his third (if) too-----if *Robert de Monte-alto* dyed soon after King *Stephen*: what then? why then
Earl

How the words
Sicut Sicut
Compano Hen-
rici Regis
must needs
be understood
of a Henry
who was
King before
the time of
Earl Hugh
made.

Earl *Hugh* must be a great deal older, at least 24. years older than *Bertred* his Wife.

But if these (ifs) be all false suppositions, and if Earl *Hugh* did make this Deed towards the middle of the Raign of *Henry* the Second, and if *Robert de monte-alto* out-lived Earl *Hugh*, (all which are more reasonable to imagine than the other ifs): what then? We may then conclude Earl *Hugh* was not near so much older than *Bertred* his Wife, as Sir *Thomas* would suppose him: See what stuff he here produceth to prove nothing.

Pag. 49. *Of his Answer to my two Books.*

Here he saith, that whereas I pretend to have shewed that Earl *Hugh* could neither be so old as he would suppose him, nor yet that the said Earl was born in the year of Christ, 1142. Sir *Thomas* Answereth, that any man who can but count 20. to wit, how long it is from 1109. to 1129.

1129. or from 1110. to 1130. if he looks on his *Defence of Amicia*, pag. 51. and on his Reply, pag. 61. may find that *Hugh Cyvelioc* might be older than he saith.

My Reply.

But whosoever views his Computation in those places, will find the same very wilde: every supposition upon the utmost possibility; and as here, so there, he goes all upon (ifs), which cannot encline any judicious man to a belief; & here he concludes too, but upon a bare possibility, That Earl *Hugh* might be older than he now saith; that is, at least 24. years older than *Bertred* his Wife, which is certainly a great deceit of the Reader, to encline a belief that a thing is so, because it is possible to be so: Doth he any where prove substantially that Earl *Hugh* was so much older than his Wife, more than what may be very ordinary with other men in the like Case, or reasonably to suppose he had a former

mer Wife? Shew me that if he can: I am sure it cannot be proved; see my Answer to his defence of *Amicia*, pag. 48, 49. It appears clearly by the Record in the Exchequer at *Westminster*, that Earl *Hugh* was but six years older than *Bertrey*, or thereabout, which dasheth out all his Ifs for ever: See more hereof in my *Peroratio ad Lectorem*, at the end of this my second Reply.

Pag. 50. *Of his Answer to my two Books.*

Here he knocks me dead, and thinks now he proves *Amicia* no Bastard for certain,---for he doubts I am no good Arithmetician, because in my *Historical Antiquities*, pag. 137. I said I was eight years older than my Wife, and he hath taken great pains to search out the difference of our Ages, and finds I am not much above six years older than my Wife.

My

My Reply.

It is true, I there said so, speaking cursorily and over-hastily without due examination ; for I then conceived she had been born in the eighth year of my Age ; but it appears now she was born in the seventh year of my Age ; so that I am by exact account only six years and two moneth, and about two weeks older than my Wife.

But what is all this to *Amicia*? The Reader may see how he makes it his business to catch and carp at every thing material or not material.

Pag. 51, to pag. 60. *Of his Answer to my two Books.*

In all this, there is little or nothing material to the main point ; but he spends much time in comparing sundry ancient Authors, to shew that *Matthew Paris* is misprinted in the place urged by me
(to

(to wit, in the Edition put out by Doctor *Wats*, 1640. pag. 79.) where he saith (*William*) *Mandevyle* was taken Prisoner at Saint *Albans*, sub anno. 1142. for (*Geffrey*) *Mandevyle*.

My Reply.

I will never excuse an error, nor deny a truth: I would I could say as much of Sir *Thomas*: indeed it is much that this very word should be mis-printed above other words in *Matthew Paris*: I believe neither Sir *Thomas*, nor any other scarcely, upon such an accidental business could have suspected it to be so, having lighted upon the place by chance, else I should have made a stricter enquiry; but it had reason to put him upon an enquiry.

Yet where he saith, pag. 59. that I dealt deceitfully herein, and that I did it purposely: This is another Trip of Sir *Thomas*; for had I then known it to be mis-printed, I would
never

never have urged it, at least without a Note upon it.

However the mis-printing of (*Hugh*) Earl of *Chester* for (*Randle*) in the *Welsh History*, pag. 197. holds firm for ever: and Sir *Thomas* confesseth it mis-printed in this his Answer, pag. 52. very probably in the latter Copies, the letter (*R*) standing for a word in the Original book, might be mis-written (*h*) in the Copy; which was supposed to be *Hugh*, or else for certain the Original was mistaken.

See my first
Reply. Page
92, 93.

But for all this, Sir *Thomas* is so far from an ingenious Confession herein, that he will justify his absurd error of computing Earl *Hugh* to be 41. years old when he married *Bertred*; & this he grounds upon the *Errata* at the end of Doctor *Powels* Notes on the *Welsh-History* aforesaid, where it is said, we must read----pag. 197. line 16. *Hugh* Son to the Earl of *Chester*.

Which amendment is certainly as far from the truth, as that already Printed, and it is very questionable

able whether the said Earl *Hugh* ever lived to be 40. years old, for he dyed *Anno Domini*, 1181. and suppose we, that he was eight years old when his Father dyed *Scilicet*, 1153. (which *I* believe is as much as by reasonable account any indifferent person can well judge him so to be) yet would Earl *Hugh* be but 36. years old when he dyed, *Anno scilicet* 1181. and if he were twelve years old at the death of his Father (which *I* am confident can never be proved by good Authority) yet would Earl *Hugh* be but 40. years old when he dyed : See what a shift Sir *Thomas* would now make, but to suppose Earl *Hugh* to have a former Wife, which certainly he never had; but it appears now by a Record, that he dyed about the Age of 32.

Again, Sir *Thomas* saith, pag. 51. that *I* go about to disparage Doctor *Powel* all *I* can, and that *I* will not suffer the Welsh History to be read, as it should have been Printed; as also pag. 52. that *I* will now disparage the said History, although in my

my Historical Antiquities touching the Kings of *Wales*, I did chiefly follow the same:

This is another unkind reflection: *Sit liber Judex*, See page ~~109~~ pag. 94. of my former *Supra*. Reply; my words are these---As I believe it [that is the Welsh History] to be true in many things, so it hath also some gross mistakes; nor is it at all proved by good Authority, or exactly composed through-out; nor shall you therein from the beginning find all the Wives, Children, and Bastards of the Ancient Kings and Princes of *Wales* clearly Recorded; and so are Doctor *Powels* Notes thereon full of Errors, and especially in his absurd Pedegree of the Earls of *Chester*, and in several other things.

Here is nothing but what every knowing man (who doth seriously peruse the same) will acknowledg to be true; and some mistakes may be, and are in the writings of very Learned men, and yet no great dis-

disparagement neither : and I do
confess also, that I followed the
Welsh-History in the Princes of
Wales, for I had no better, nor o-
ther to follow.

Pag. 60. *Of his Answer to my two
Books.*

Having now concluded his An-
swer to my former Book, he tells us
that in my Latine Epistle to the
Judges (which he supposeth to be
mine, though I vouchsafe not to
set mine name thereto) I said he
was the first Instigator of this Con-
troversie; but whether that be so or
no, he refers the Reader to his E-
pistle before his *Defence of Amicia*;
and to the second and third pages
of his Reply.

My Reply.

But what Sir *Thomas* saith there,
was not the first time of this Con-
troversie between us: For he saith
in that Epistle, that if I would have
E deli-

delivered what I did conceit about *Amicia*, as an uncertainty only, then I knew he would have rested satisfied with the judgment of those many knowing persons, who dissented from me in opinion therein.

But this was a little before my Historical Antiquities were Printed;

† About 1672. † also, purposely to desire me (hearing then that my Book was about

to be Printed) that I would put *Amicia* under the Title of the doubtful Issue of Earl *Hugh*; when I told him that I thought it not fit to put down in my book any such third title of doubtful Issue, for she must certainly be either lawful or unlawful, which method I had observed in the rest. I told him also that it was not at all doubtful unto me, for in my judgment she was certainly a Bastard: And then he said, if I did place her under the unlawful Issue of Earl *Hugh*, he would write against it, which afterwards he did

and I believe it had been as good to have let it alone.

But before this, † we had † 1664
long intercourse (some Also
years before) by Papers be- 1672.
tween us upon this Contro-
versie, which Papers I have yet by
me; and which (when my book
was in Printing) he desired I would
not print any of them without his
consent, and I promised I would
not, and I kept my word with him;
and had it not been for those pas-
sages betwixt us, I had not said near
so much of it in my book as I did,
and so much for this. See my An-
swer to the *Defence of Amicia*,
pag. 3.

Pag. 60. Of his Answer to my
two Books.

He tells us also in the same page,
that I do not put the question of
Law aright; but the point must be
otherwaies proved then by such a
frivolous question as mine is.

My Reply.

I am sure I know not how to put it clearer to the point; *videlicet*, whether Lands in those Ages might not by the ancient Law be given in free-marriage with Bastards? for Sir *Thomas* saith, the Deed of Services in frank-marriage with *Amice*, proves she was no Bastard, because (saith he) the Law will not allow such a grant with a Bastard: I say, though at this day the Law will not allow it, yet it would then allow such a grant in the Age when *Amicia* lived, as the Law was then taken: must not now the question be---- whether the Law in those Ages would so allow it, or no?

And yet it is no sure Argument to prove *Amice* no Bastard, though the Law should not then allow such a grant; as to argue thus---- *Amice* had Lands given with her *in libero maritagio*, ergo, *Amice* was no Bastard, for many irregular Deeds may sometimes pass, which in strict-
ness

ness of Law might not prove authenticall: But *I* conceive the Law in those elder Ages would and did allow such grants; and we plainly see he waves the question, and will not abide the test; and it may suppose too, that the Opinions of some Lawyers (which he brags on in his books) were procured by putting off a wrong Case.

I will also agree with him to put the other Case to the Judges, as he would have it put; *videlicet*, whether the Law be not now altered in this and sundry other particulars, from what it was in elder Ages, and that without any Act of Parliament? for otherwise Lands would now pass with Bastards legally *in libero maritagio*.

Pag. 61. *Of his Answer to my two Books.*

Here he saith, that if *I* had been so conversant in Divinity, as *I* would have the Judges to believe, it seems strange to Sir Thomas that

I had not learned my duty better to my deceased Grand-mother ; for we are bound to Honour all our Parents, mediate or immediate, living or dead ; and so compares my writings of these books to the wicked act of *Cham* in the Scripture, who divulged the shame of his Parent.

My Reply.

In the first place, let me observe to the Reader , that this is he who oft blameth me for mis-repeating, and yet runs into the same error himself, and tells us here, that *I* would have the Judges to believe that *I* am much conversant in Divinity ; let him shew me where *I* say so, if he can, or that *I* make, or say, that *I* am conversant in Divinity ; my words are -- *I* prefer Divinity above all other Studies ; this is far from saying, *I* am conversant in Divinity.

In the next place, this act of mine cannot by any rational man be said to be like that of *Cham*, for he re-

vera,

vera, saw his Fathers Nakedness, and did not cover it, but told his Brethren without: now *I* could not see my said Grand-mother's nakedness in that sence, who dyed above 450. years agoe; nor will any man say, but himself, that *I* have uttered any scornful or disgraceful words at all against her.

Expositors on the Fifth Commandement, tell us, it includes in it the honouring of Kings and all in Authority over us, as well as our natural Parents, to whom we owe honour and reverence in like manner.

And tell me, vvere ever any of those vworthy Persons or Historians, vvho have commemorated the Wives and Concubines, Children and Bastards of our Kings of *England* in their Histories, ever tearmed *Chams* for the same? Nay, doth not *Moses* himself, in his History of *Genesis*, chap. 38. Record the Whoredom of *Judab* (who was great Uncle to the Father of *Moses*) with *Thamar*, his Daughter in Law,

and also her Bastard-Twinns, *Phares* and *Zarab*? Nay, are not these Twinns reckoned up in the sacred Genealogy, *Matthew*, Chap. 1.

How many great and most honourable Families have been descended from Bastards, Kings, Dukes, Earls, and others?

I have heard that King *James* used to say, it vvas a good Family that had neither Whore nor Thief a Kin to it: I am sure it is a rare Family that never had any Bastard.

But Sir *Thomas* saith, that in some respects I have exceeded that Pattern of *Cham*,

† pag. 62. † though I have done nothing at all like that

Act of *Cham*; I am sure he is *Kim-Kam* from the point, but he forgets his ovvn duty, as to revilings, 1 *Cor.* 6. 10. and follovvs not the Pattern of *Michael* the Arch-angel, vvho durst not take up a railing accusation against the vvorst of Antagonists, *Jude* vers. 9. and so much for the Case of Divinity, vvhich he mistakes as vvell as his Lavy. It is

as Lawful for any Historian to Record the Bastards , as Lawful Children: It is an error not to do it.

Pag. 62. *Of his Answer to my two Books.*

1. Here he saith, that in the second book which *I* direct to all the Judges of *England*, it so falls out that there is nothing therein, but what is in my former books, and is already Answered; though if there had, he should not have presumed to have given any Answer thereto, because those learned Persons know well enough what the Law was and is, in all particulars.

2. How-ever he cannot but observe how slightly *I* speak of the Lord *Cook* in my 48. page.

3. And also, how *I* have such light expressions in my book directed to the Judges, as he believes were never used before by any Person of discretion to such Reverend and Learned men; no wonder therefore if I speak cursely of him, and

and tell him of so many impertinencies.

My Reply.

1. To the first, *I* believe there is something in that Second book, which is not in my former books, nor yet answered by him; and though the Learned Judges know what the Law was and is, better than either of us; yet we may with modesty offer what we conceive is right to their more grave judgments, but it is a good excuse.

2. To the second, *I* do not speak slightly of the Lord *Cook* in my 48. page, nor any where else; my words there are these,—As for the Lord *Cooks* citing of *Bracton* or *Glanvil*, in the Margent, as Authority, for what he there saith, if he maketh a false quotation, or such, as is not to the point, neither *I* nor any man ~~else~~ else are bound to believe the Lord *Cook* more than any other.

So let the Reader judge whether this be not another Trip.

3. To

3. To the third : I conceive *I* have no such light expressions that might not be used to our light Controversie, or before Learned Judges, nor yet such as were never before used by any person of discretion, as he alledgeth : he might have done well to have shewed what those expressions were ; but perhaps, if they had been used by such a discreet Person as himself, then they would not have been accounted light expressions, but rather plain to the Point, not rude at all.

Pag. 63. *Of his Answer to my two Books.*

He saith here in the very Conclusion of his book—whether he be guilty of those [Impertinencies] or untruths, or of that opprobrious Language which *I* do charge him with, let the indifferent Reader be judge ; and whereas it appears that *I* am resolved to have the last word, though *I* have nothing new to say ; and that my writing again
be

be contrary both to my duty to my Deceased Grand-mother, and to my promise in Print: He declares that if what *I* shall write hereafter be no more to the purpose than what *I* have said in those two last books, that he will not appear in Print against me any more.

My Reply.

To all which *I* say, that *I* do not know that *I* have any where at all charged him either with Impertinencies or Untruths, but what are so charged justly by me, that *I* can suddenly call to remembrance.

And for opprobrious Language (wherein this last Answer of his far exceeds.) *I* have only this to add for my self, that in my Answer to his *Defence of Amicia*, *I* think no man can shew me any one uncivil expression in the whole book; but afterwards, when he had in his following books taxed me unjustly in many things, and carped at every thing in mine, Pertinent or Impertinent,

ment, *I* confess *I* was more severe in my expressions in my latter books, but he led the way; what *I* have said, was but in vindication of my self, for my Reputation is as dear to me as his can be to him; and though my expressions sometimes may seem tart, yet not so opprobrious neither as he makes them; had he kept close to the point, and avoided his Calumnies and Cavils, and confest his Errors more ingeniously throughout, *I* should neither have had occasion to retort, nor have Answered to them.

And what *I* have written above my first intention, he hath forced me thereunto.

But now he will appear no more in Print against me, if what *I* shall write hereafter be no more to the purpose than what *I* have said in those two last books.

Whereunto *I* say, that for certain there is so much already said
to

(61)

to the purpose in them, as is not yet solidly and substantially answered by him; and herein I submit my self to all Ingenious Readers.

Mobberley, May 28,
1 6 7 5.

Perora-



PERORATIO

AD

LECTOREM.

SINCE I writ this Second Reply,
I am credibly informed that
Sir Thomas did write to
some of his Friends about
May or June, Anno Domini, 1675.
to this or the like effect.---

I hope now the Contest between
sir Peter and me will be at end; for
Mr. Dugdale, in his Baronage of
England, page 41. hath delivered
his Opinion on my side: and Sir
Peter having appealed to the Judges,
Mr. Dugdale thereupon did move
them in the Case; and they upon
mature

mature debate determined that Amicia was no Bastard. I have seen his last Sheet, which I have Answered, but shall not yet Print it.

1. This Letter was shewed up and down *Chester*, purposely to delude the easie multitude; for since he cannot demonstrate or support the legitimacy of *Amicia*, either by good Reason or Authority, Sir *Thomas* used this secret practice to gain a belief of his Cause, as supported by Opinions; whereas in truth there is no such thing as a mature debate by our Reverend Judges in the Case of *Amicia*; for as yet the Case in Law is not agreed upon by both sides, how then can there be a mature debate, or determination of the Controversie? for Sir *Thomas* saith in his Answer to my two books, pag. 61. that the point must be otherwise proved than by such a frivolous question as mine is; and a little before pag. 60. he saith that in the Epistle Dedicatory, [wherein I appeal to the Judges, I do not put the
the

the question aright ; whereas there can be no other point of Law to be resolved as to the Controversie in hand, but this,---Whether Lands in those elder Ages might, and did Lawfully pass with Bastards in *libero maritagio* ; or no ? That they might, and did so pass, I have before in my other Books clearly proved as well by the very words of *Glanvil* himself, and the Law then no where disallowing the same ; as also by three sure Precedents of those Ages.

But because Sir *Thomas* takes this upon trust from Mr. *Dugdale*, I shall here in publick unmask that Letter more fully, to the undeceiving of all men.

2. As to the Opinion of Mr. *Dugdale*, it is true, he hath delivered his opinion for the Legitimacy of *Amicia*, in his Book of the Baronage of *England*, newly Published, *Tom.* 1. pag. 41. And it is no more than what Sir *Thomas* formerly told us in his books, That he was of that judgment before he published his

said book of the Baronage: What then? many very wise and knowing men have declared their Opinions with me, that she was a Bastard; both Divines and Lawyers, and other grave and understanding men; but I shall examine these things more particularly.

3. And in the first place, I shall always desire to be understood without the least detraction from the honour and due praise of Mr. *Dugdale*, of whom I have ever had a good esteem, as a most diligent and indefatigable searcher of the Records and Antiquities of our Nation: *Sed Bernardus non videt omnia*; nor should I now have mentioned him at all for his opinion herein, but that Sir *Thomas Manwaring* brings him here upon the Stage.

Only we may by the way take notice, that some years agoe Mr. *Dugdale* did draw up Sir *Thomas Manwaring's* Pedegree; wherein he puts *Amicta*, the Wife of *Rafe Manwaring*, without her due distinction

stinction (as I conceive) of a Bastard, and is therefore the more concerned to stickle for Sir Thomas in this Contest between us: So that formerly he consulted some Lawyers for their Opinions in this Case of History; for whether Bastard or no Bastard hath nothing of Law in the Case, or whether *Hugh Cyvelioc* Earl of *Chester*, had any former or other Wite besides *Bertra*? these are questions to be resolved by History, Records, and Reason; but Mr. *Dugdale* would now support his opinion with a point of Law, and therefore moved some Lawyers for their opinions; but how the Case was stated, no body but himself knows, nor what the point of Law was, wherein they delivered their opinions: and methinks it argued some doubt within his own breast, that she was a Bastard; otherwayes why should he consult any Lawyers in the case: and in truth, let the Law be what it will, she was certainly a Bastard, which to my poor reason, is as plain

as the Sun when it shines; but it seems he was satisfied with the Opinions of those Lawyers, that she was Legitimate, because (saith he) it is a known *Maxime* in the Law, that nothing can be given in Frank-marriage to a Bastard: but this *Maxime* is to be understood vvith a due distinction of the times and ages, othervvise it will fail; but I shall anon speak more of this, and of his moving the Judges in the Case; wherein I should be glad to see vvhat Case he put, and the resolutions of our Reverend Judges thereon, under their hands; in the mean time I shall go on with Mr. *Dugdale's* Opinion, whereon Sir *Thomas* so much depends.

4, In his said *Book* of the Baro-nage of *England*, pag. 34. b. he calls *Robert* and *Ottivel*, two Illegitimate Sons of *Hugh* (Sirnamed *Lupus*) Earl of *Chester*; wherein he is to be commended for speaking out, for so they were without all doubt: Howvbeit, I find not any Author hitherto, vvho have Writ-
ten

ten of our ancient Earles of *Chester*, Commemorating either these, or any other at all, as Bastards, to any of our ancient Earls of *Chester*; neither *Brooks* in his Catalogue of Nobility, nor *Vincent* in his Corrections of *Brook*, nor *Milles* in his Catalogue of Honour, nor *Fern* in his *Lacyes-Nobility*, nor *Powel* in his Notes on the Welsh-History, pag. 294. nor yet Mr. *Dugdale* himself, in his *Warwick-shire*; till here in his late book of the Baronage, he now speaks out a little more.

5. But yet in the same page, he calls *Geva* (Daughter of *Hugh Lupus*, and Wife of *Geffry Ridel*) a Legitimate Daughter not to be doubted of, because she had *Drayton-Basset* given her in Free-Marriage by her Father, which could not have been so bestowed on a Bastard, as our Learned Lawyers do clearly affirm; thus Mr. *Dugdale*.

Which very Deed of *Drayton-Basset* to *Geva*, I have produced in my *Historical Antiquities*, pag.

112, 113. as a sure Precedent that Lands did pass with Bastards in Free-marriage in those more ancient Ages, as well as with lawful Daughters; and have fully proved *Geva* to be a Bastard out of an Historian of good Credit, and Contemporary with *Geva*, by sure Consequence out of his words: See my Answer to the Defence of *Amicia*, pag. 33. to pag. 47. which Reasons and Authorities are not yet solidly or rationally Answered by any, and which I shall have occasion further to mention, when I come to the Case of *Amicia* truly stated.

And here by the way, we may take notice, that these two Sticklers for *Geva*, Sir *Thomas Manwaring*, and Mr. *Dugdale*, agree not in their points of Law; for Sir *Thomas* will not have these words (*in libero Conjagio*) used in the Deed of *Drayton*, to be good in Law, to make it a gift in Free-marriage, and only to convey but an Estate for life unto *Geva*; because the Lord *Cook* affirms that a gift in Free-marriage must

must be strictly tyed up to the words (*in libero maritagio*) and no other: See more of this in my first Reply to Sir Thomas, pag. 4. to pag. 15.

But Mr. Dugdale and his Lawyers take the words (*in libero Conjugio*) in the Deed of Drayton, to be a good gift in Free-marriage; and so without doubt it was, and in those Ages as good as *in libero maritagio*; and did convey an Estate of Inheritance to the Heirs, of Geva, who enjoyed Drayton accordingly.

So we see Sir Thomas and the Lord Cook are of one Opinion, and Mr. Dugdale and his Lawyers are of another opinion; both of them against the Bastardy of Geva, which yet is clearly collected by sure consequence out of Ordericus an Historian, of very good Credit, and contemporary with Geva, who knew the truth better than any man now living can possibly know, and needeth no point of Law to prove the same, and cannot be dis-

proved by any point of Law whatsoever.

6. As to *Amicia*, he hath these words in his said Book of the Baronage, pag. 41.-----That she was Daughter of Earl *Hugh*—

1. It sufficiently appears, not only from the grant of two Knights Fees with her in Frank-marriage, to *Rafe de Mesnilwarin*, where he so termeth her, but by another Deed of *Roger de Mesnilwarin*, her Son, wherein he calls *Randle*, Earl of *Chester*, his Uncle, who was Son of the said Earl *Hugh*.

2. As to her Legitimacy, I do not well understand how there can be any question, it being a known Maxime in Law, that nothing can be given in Frank-marriage to a Bastard.

3. The point being then thus briefly cleared, I shall not need to raise further Arguments from Probabilities to back it, then to desire it may be observed that *Bertra* (whom I conclude to be a second Wife) was Married unto him when
he

he was in years, and she her self very young : So that he having been Earl no less than 28. years, it must necessarily follow that this *Bertra* was not born till four years after he came to the Earldome ; nor is it any marvel he should then take such a young Wife, having at that time no Issue-male to succeed him in this his great Inheritance : thus *Mr. Dugdale*.

I. To all which I say, first, That it plainly appears she was Daughter of Earl *Hugh* ; but that she was a Lawful Daughter , that nowhere appears ; nor did the Earl in the Deed mentioned, grant her two Knights-Fees in Frank-marriage, as is here alledged ; but he granted with her in Frank-marriage, the Service of *Gilbert*, Son of *Roger* ; to wit, the Service of three Knights-Fees, by doing to the Earl and his Heirs, the Service of two Knights-Fees ; so that the Earl released only the Service of one Knights-Fee by this Deed ; too mean a Portion for

for a Lawful Daughter of the Earl of *Chester*, especially for the sole Daughter and Heir by a former Wife, as Mr. *Dugdale* supposeth her to be; so that *res ipsa loquitur*, whereas the four lawful Daughters of Earl *Hugh*, by his Wife *Bertred*, Married four of the greatest Earls then in *England*, and shared all the Lands of the Earldome of *Chester*; and sure the Eldest Daughter by a first Wife (if the Earl had a former Wife) ought to have had as good a Portion of Lands or Money, as any of his Younger Daughters by a latter Wife, which for certain *Amicia* never had, nor claimed.

2. To the second, the *Maxime* of Law, that nothing can be given in Frank-marriage to a *Bastard*, is to be understood of the Law, as it is now taken in these latter Ages; but that the Law was otherwise taken in the time of *Amicia*, and those more ancient Ages, I have proved in my former books, both from the words of *Glanvil*, who was Chief Justice of *England*, and lived in the

the very Age with *Amicia*, as also by three clear Presidents of those former Ages; and shall have further occasion to mention the same in the Case of *Amicia* hereafter following, which I have briefly and truly stated by it self, for the better apprehension of all men.

3. To the third: Here Mr. *Dugdale* concludeth *Bertra* to be a second Wife; but doth not, nor cannot in the least prove a former Wife; much less *Amicia* to be the Daughter of a former Wife.

And as to his Argument of Probability, I deny absolutely that Earl *Hugh* Married *Bertra* when he was in years; for though he were Earl three or four years before she was born, yet it follows not that he did Marry her when he was in years, for he came to be Earl in his Infancy.

But that I may lay this Argument of Probability (as he calls it) asleep for ever, take this Record here following, out of the Roll de *Dominabus Pueris, & Puellis*, remaining

maining in the *Exchequer* at *Westminster*: Which Roll Mr. *Dugdale* hath there also cited in the *Margent*, to prove the Age of *Bertrey*, though not in the Words which I have here more at large expressed: I say, take here the true Coppy of the *Rcord Verbatim*, which my Friend hath twice examined for me, to prevent Mistakes: viz.

In Rotulo de Dominabus
Seacca- { Pueris, & Puellis, de an-
rium a- } no 31. Hen. 2. in Custa-
pud West- } dia Rememoratoris Regis
minster. { Existente, continetur (in-
ter alia) ut Sequitur, &c.

Com. Lincoln.

Balteslawe - Wapentak.

*Matilda Comitissa Cestrie est de do-
natione Domini Regis: et fuit filia
Roberti Comitis Glocestria filij Re-
gis Henrici Primi, et est L. anno-
rum, & amplius: Hujus ville Re-
cepit Comitissa his VIII. annis: Ip-
sa*

*sa tenet Wadinton in dote de feodo
Comitis Cestria: et firma est XXII. libr.
per annum: dicta villa valet per an-
num XL. lib: Cum hoc instaura-
mento, Scilicet, II Carucis, IIII Vac-
cis, I Tauro, IIII Suibus, I Verre,
D ovibus, qua ibi sunt: --- &c.*

Com. Lincoln.

Jeretre - Wapentak.

*Bertreia Comitissa, filia Camitis de
Evereow, uxor Hugonis Comitis
Cestriae, est de donatione Domini
Regis; & est XXIX annorum. Ter-
ra quam Comitissa habet, XL. lib.
Maritagium; & defectus sunt ultra
mare, ideo nesciunt Furatores quid
valeant. Dominus Rex praecepit,
quod ipsa haberet XL libratas terra
Domini sui in Beltesford, Hem-
mingly, & Duninton: licet non habuit
nisi XXXV libratas, & X solidatas.
Quia (ut dicunt) dicta terra non po-
test plus valere cum Instauramento
quod comitissa ibi recepit; Sci-
lices, V Carucis, CCCXLI ovi-
bus,*

*bus, X Suibus, I Verre. Sed si in
Duninton apponerentur CC oves, &
X juves, & I verris, tunc Valeret.*

So that, by this Record it clearly appears, that as *Bertrey* was twenty nine years of Age, 31. *Hen. 2. 1185*; So *Maud* (the Mother of *Hugh Cywellioc*, Earl of *Chester*) was aged fifty years, *Anno Domini 1185. 31. Hen 2. &c.*

And so *Maud* must be born *Anno 1135.* and *Bertrey* must be born *Anno 1156.*

Now it cannot be imagined, that *Maud* could have a Child before she was fifteen years of Age: And then Earl *Hugh* could not be born till the year 1150. at soonest. And by Consequence, Earl *Hugh* was about three years old when he came to be Earl; and about six years older than his wife *Bertrey*.

*He might
be Page
but he could
do no more.*

What a monstrous and wild Computation then hath Sir *Thomas Manwaring* made, and upon utmost Possibilities too, supposed, in his Answer to my *Addenda*, pag. 50, 51. where

where he would have Earl *Hugh* to be 41. years old when he married his Wife *Bertrey*, which Marriage he supposeth to be *Anno* 1171. So also in his Answer to my two Books, pag. 49. Wherunto see my *First Reply*, pag. 91. to pag. 94. See also in my *Second Reply*, to his Objection in that Point, mentioned here a little before, pa: 46, 47.

And how could Earl *Hugh* now be in years (as Mr. *Dugdale* would have him) when he married his Wife, supposing with Sir *Thomas*, the Marriage to fall *Anno Domini* 1171? For, by this Record Earl *Hugh* would then be but 21. years old, and his Wife about 15. years old. So this Argument of *Probability* is become an Argument of *Improbability* of the Earl's having any former Wife.

This Record came to my hands after I had written my *Second Reply*: And I am very confident, that whensoever any Record, tending to this Point, concerning Earle *Hugh*, or *Annicka*, shall hereafter, at any time, be

be discovered, it will more and more illustrate the Truth of what I have written about them.

7. Having now laid asleep for ever The Argument of the Sticklers for the Legitimacy of *Amicia*, drawn from the Erroneous Computation of Earl *Hugh's* Age; I come now to the Letter of Sir *Thomas Manwaring*, before mentioned, written by him to a Kinsman both of his and mine, and left with *Throp* the Stationer in *Chester*, purposely to be divulged, and made known to every Man in Town: wherein he writ- (among other things), That I having appealed to the Judges, Mr. *Dugdale* had moved them in the Case: who upon Mature debate, determined, that *Amicia* was no Bastard, as I was credibly informed by one who saw the Letter.

But, (as I said before) How could there be any Mature-debate, or Determination of the Point in Controversie by our Reverend Judges, whiles as yet the Case is not at all agreed upon between us? For,
Sir

Sir Thomas waves the Question in Law, and will not abide the Test; See pag. 60, 61. of his Answer to my two books: see also, in this book p. 64.

For whether *Amicia* was a Bastard, or no? this Question hath nothing of any Law in the case, and therefore unfit to be put to our Reverend Judges for their Opinions, unless also all the Records and Histories touching the same, together with the Reasons alledged on both sides, were produced before them: It is more proper for them to judge only upon the point of Law.

And it is granted on all hands, that Lands cannot pass with Bastards *in libero maritagio*, at this day, as the Law is now taken: but in the more ancient Ages, when the Deed to *Amicia* was made, Lands might and did usually pass with Bastards *in libero maritagio*: I affirm it out of ancient Precedents; Sir Thomas denies it.

Now all Deeds by the rule of Law, are to be Construed and understood

G flood

stood according to the time when they were made; so that there is now no other Case of Law to be put, but this, as I put the same in my Epistle Dedicatory, to all our Reverend and Learned Judges; to wit—

Whether in the Age of *Glanvil*, Lands lawfully might, and did usually pass with Bastards in Free-Marriage, or no?

Again, I am assured from very good hands (who have lately enquired of many of our Judges above) that there was no such thing as a mature debate & determination, as Sir *Thomas* mentioneth in his Letter, nor their Opinions at all delivered as yet in the Case of *Amicia*, now in Contest; and some of them said, that they never had any such a question asked them, as whether in the Age of *Glanvil*, Lands might Lawfully pass in Free-marriage with Bastards?

If Mr. *Dugdale* hath moved any of the Judges in private, for their Opinions in any point of Law about

Amicia,

Amicia, had he but given me due notice of such his intention, I would have met him half way, and so the Case might have been truly stated, and the point thorowly debated; for he being on the place, might have those opportunities which I could not at this distance possibly have, and so the truth would have appeared to the world.

And therefore, that I may deal above-board, I have here following, published by it self, The Case of *Amicia* truly Stated, for the better apprehension & information of all Persons; and the rather, for that Mr. *Dugdale* only buildeth his Opinion of the Legitimacy of *Amicia* on the same point of Law, in his Baronage of *England*.

And howbeit (as I formerly said) I left every man to his own free judgment, thinking rather to establish my own Opinion by Authorities and good Reason, then by other mens Opinions; so I never went about to hunt for Opinions, especially in the Case of *Amicia*, (for ma-

ny did concur with me without my seeking) till after that Letter of Sir Thomas Manwaring before-mentioned: for I ever counted it an improper thing to prove a point of History by a nice point of Law.

But I have lately made some enquiry, and am assured from very good hands, that some of our more eminent Judges above (and I believe all of them, if they would deliver their Opinions in the Case) do concur with me in the point of Law aforesaid; and so do also other Eminent and Learned Lawyer here below; that in those elder Ages, a gift in Free-Marriage, with a Bastard, was good, although at this day our Law is otherwayes taken.

So that now there is not so much as one seeming Argument of Reason left to uphold the Legitimacy of *Amicia*.

Besides, one of our most eminent Heralds of our Nation, and King at Armes, is of Opinion with me also, that Earl *Hugh* never had any other Wife

Sir Edward
Bysh.

Wife but *Bertrey*, as I have it from
 a sure hand, [#] who was then present
 when he publickly spoke it, whose
 judgment I may well bottom on;
 for I am sure there is no History, or
 Record to prove any other Wife at
 all, and very many other judi-
 cious and knowing men do concur in
 opinion, that *Amicia* was a Bastard;
 and so I leave it to the judgment of
 all men, who are vers'd in Anti-
 quities, Records, and Histories.

[#] *son my own
 son Robert
 Leicester.*

And so I have done, if Sir *Tho-*
mas hath dooe; and now I think it
 will be time for both to have done.

Mobberley, Decem-
 ber the 17th.
 1675.

F I N I S.

Will be better, as I have it from
 the hand, who was then present
 who he nobly speaks, who
 and I may well know on
 and there is no history
 to improve any other Will
 and very many other judi-
 cial know a man do not in
 that was a Ballad
 to leave it to the judge
 men, who are in a
 better Record, and History
 And I have a no, if I
 which does, and now I
 will be in the best to have done

December 1771

1771

1771

THE
CASE
OF
AMICIA
Truly Stated.

By Sir Peter Leycester,
Baronet.

August the 5th. MDCLXXV.

Qui vult decipi, decipiat.

Printed in the Year, 1676.

THE

CASE

OF

AMERICA

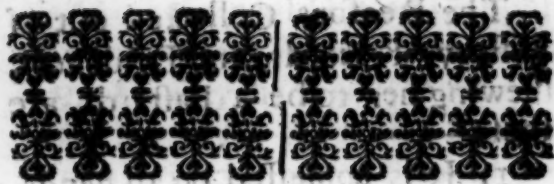
Truly Tested.

By the Hon. J. M. Smith,
of the Hon. House of Representatives.

Copyright 1854, J. M. Smith.

Printed by J. M. Smith.

Printed in N. York, 1854.



THE
CASE
OF
AMICIA

Truly Stated.

THe Question concerning *Amicia*, Wife of *Rafe Manwaring*, and Daughter of *Hugh*, Sir-named *Cyvelioc*, Earl of *Chester*, is briefly this---

Whether the said *Amicia* was a Bastard, or no? This is altogether a question of History, and nothing of Law at all in the Case.

The

The Reasons Collected out of History, Records, and Evidences, shewing her to be a Bastard, are these——

I. It is confessed on all hands, that *Amicia* was no Daughter by *Bertrey*, the Wife of Earl *Hugh*, for then she would have shared the Lands of the Earldom, with the other Daughters by *Bertrey*, which for certain she did not, nor ever claimed any part of the same, as is most manifest by the Record of 18. Hen. 3. when all the Co-heirs did implead *John* the Scot, then Earl of *Chester*, upon a Writ *de rationali parte*: See my book of Historical Antiquities, pag. 151. as also by the testimonies of many of our ancient Historians, who have Recorded all those Daughters in their books.

And she could be no Daughter by any latter Wife, because *Bertrey* survived Earl *Hugh*, her Husband: See my said book of Antiquities, pag. 132, & 139, & 143, & 148.

And

And she could be no Daughter by any former Wife ; because Earl *Hugh* never had any other Wife but *Bertrey* ? And the Sticklers for the Legitimacy of *Amicia*, do confess that they cannot prove any other Wife at all ; much less can they prove *Amicia* to be the Daughter of any such Wife : Therefore the Earl having no other Wife but *Bertrey*, and *Amicia* being no Daughter by *Bertrey*, *Amicia*, Daughter of Earl *Hugh*, must certainly be a Bastard.

2. Earl *Hugh* had several other Bastards, as is evident by ancient Deeds ; # and if the bare al-
~~ledging~~ ledging that he had another Wife be sufficient without due proof, then all his other Bastards may be made Legitimate , by saying that they were by another Wife : And our ancient Historians , as *Matthew Paris* , *Poly-Chronicon*, *Knigh-ton*, *Stom*, and others, have Recorded the Lawful Children of Earl *Hugh* ; but not one of them
 men.

mentioning *Amicia* in the least, nor any former Wife at all, which some one or other of them, without doubt would have taken notice of, had *Amicia* been a Legitimate Daughter.

3. *Rafe Manwaring*, the Husband of *Amicia*, was not an equal Competitor at that time, to have Married a Lawful Daughter of the Earl of *Chester*; for we find the Lawful Daughters of this Earl *Hugh* were Married to the greatest Earls then in *England*: The Earl of *Huntington*, who was Brother to the King of *Scotland*; the Earl of *Arundel*; the Earl of *Darby*; and the Earl of *Winchester*'s Son and Heir; and therefore it is more than probable, that *Amicia* was not a Lawful Daughter, especially since no provision considerable was made for her, who must have been the only Daughter & Heir of Earl *Hugh*, by a first Wife, as those of the contrary opinion would make her; and

and if so, she ought in all Reason to have had fully as great an Estate provided for her, as any of his Children by a latter Wife, which certainly she never had. Wherefore *res ipsa loquitur*; for nothing appears to be given unto her, save only the release of the Service of one Knights Fee, given with her in Frank-Marriage, which sure was too small a Portion for a Lawful Daughter of the Earl of Chester.*

And thus much for the Question of History, whether Bastard, or no Bastard?

Which I submit wholly to the Judgement of all Wise and knowing men, who are versed in Histories, Records, and Antiquities.

And many very wise and knowing men, some Divines, some Lawyers, and other grave and understanding Persons, have herein declared that they concur in Opinion, that *Amicia* was a Bastard.

But

* See my
Dissertation
on the
Fence of
Amicia
p. 67
72.

But now ariseth another Question; for those who would have *Amicia* to be a Lawful Daughter, and no Bastard (which cannot be supported either by History, Records, or Reason) they would ground their Opinion from a point of Law; to wit, that Lands cannot pass in Free-Marriage with a Bastard; and because *Amicia* had a grant of some Services in Free-Marriage, from the Earl her Father, therefore they conclude she was no Bastard: For all other Arguments for her Legitimacy are so void of Reason and Authority, that all bottoms on this one Argument; and the Question now is this—

Whether the Deed of *Hugh*, Earl of *Chester*, (wherein he granted unto *Rafe Manwaring* in Free-Marriage with *Amicia* his Daughter, the Service of *Gilbert*, Son of *Roger*; to wit, the Service of three Knights-Fees, by doing to the said Earl & his Heirs the Service of two Knights-

Knights-Fees,) be a sure Argument to prove *Amicia* a Legitimate Daughter?

But for the better stating of the question, it is granted on both sides, that Lands cannot now pass in Free-Marriage with a Bastard, as the Law is taken at this day. The proper question of Law therefore in the present Case is this—

Whether by the Law, in *Glanvil's* time (who was chief Justice of *England*, under King *Henry* the Second, and lived in the very Age with *Amicia*, when the said Deed was made) Lands might and did usually pass in those Elder Ages in Free-marriage, as well with Bastards as no Bastards?

The Arguments for the Affirmative part are these—

1. From the very words of *Glanvil* himself (who was the first after the Norman-Conquest, who reduced the Model of our Common-Law into writing) in his *Treatise de Legibus Anglie*, lib. 7. cap. 1.

Qui

Quilibet liber homo quandam partem terre suæ cum filiâ suâ vel cum aliquâ aliâ quâlibet muliere, dare potest in maritagium, siue habuerit heredem siue non, velit hæres vel non, imo & eo contradicente : Also lib. 7. cap. 18. Liberum dicitur maritagium, quando aliquis liber homo aliquam partem terre suæ dat cum aliquâ muliere alicui in maritagium, ita quod ab omni servitio terra illa sit quæta, & à se & heredibus suis, versus capitalem Dominum, acquietanda.

And Bracton expressly, lib. 2. cap. 7. Quoniam terra data Bastardo in maritagium, sicut & aliis, vel Bastardo per se, in se tacitam habet Conditionem vel expressam de reversione----&c. See also Sir Thomas Manwaring's Law - Cases mistaken, pag. 10, 11.

So that Lands might be given in Frec-Marriage to any man, with any woman whomsoever, without any exception ; and if with any woman whomsoever, then certainly
with

with a Bastard; and *Bracton* more expressly, that Lands might then be given to a Bastard in Marriage; neither are Bastards any where disallowed by the Law, either in *Glanvil* or *Bracton*, for having Lands given in Free-marriage.

2. That the Law was so taken in the time of King *John*, and upwards, appeareth by sundry Precedents of those elder Ages, whereby Lands were given in Free-marriage with Bastards.

See one in my Book of Antiquities, pag. 112. wherein *Randle*, Earl of *Chester* (Sir-named *de Gernouns*) gave unto *Geva Ridel*, Daughter of Earl *Hugh* [that was *Hugh Lupus*] *Drayton*, in Free-marriage with the Appurtenances, even as Earl *Hugh* gave the same unto her in Free-marriage: This Deed was made about the end of *Hen. I.* or King *Stephen*.

And that *Geva* was a Bastard, *Ordericus* an Historian of good Credit, and Contemporary with *Geva*, plainly shews; for *lib. 4.*

Ecclesiastice Historia, pag. 522. He tells us that *Hugh Lupus* had many Bastard-Sons & Bastard-Daughters; yet nameth none of them in particular, *è Pellicibus plurimam Sobolem utriusque sexûs genuit, quæ diversis infortunijs absorpta penè tota periit* : *Ex mentrudem filiam Hugonis de Claromonte Beluacensi uxorem duxit, ex quâ Ricardum Cestrensis comitatûs heredem genuit, qui juvenis liberisque Carens naufragio periit.* So that having given an account of his Wife, and his Son by her, who dyed young, and without Children, he would certainly have given an Account of his other Children by his Wife, if he had had any other by her; but to put it out of all doubt, he tells us afterwards, *lib. 10. Eccles. Hist. pag. 787. Ricardus Pulcherrimus puer, quem solum ex Ermentrude filiâ Hugonis de Claromonte genuit, Consulatûm (Cestria Scilicet) tenuit*, so that Earl *Hugh* only begot *Richard* on *Ermentrude* his Wife & then by sure consequence out of his words, it must needs follow that *Geva* was
was

was one of the Earl's Bastards, she being no Child by *Ermentrude*, his Wife; which is clearly proved without a point of Law, and cannot by any point of Law be taken off.

Again, if *Geva* had been a Lawful Daughter by *Ermentrude*, then she would have been sole Heir to her Brother *Richard*, and ought to have had the Earldom of *Chester*, which she never had, nor ever claimed: See this more fully in my Answer to the Defence of *Amicia*, pag. 35. to pag. 40. and if any shall run to the old Subterfuge, and say, she might be his Daughter by a former Wife, let him prove it, and take it; and she could be no Daughter by a latter Wife, because *Ermentrudo* survived Earl *Hugh* her Husband: See my Historical Antiquities, pag. 114.

Other two Precedents we have of Lands, granted in Free-marriage with *Foan*, Bastard-Daughter of King *John*.

1. One, wherein King *John* granted to *Lewellyn*, Prince of

North-wales, in Marriage with Joan his Daughter, the Castel of Ellesmere in Shropshire; Tenendum ei, & heredibus suis qui de eo & predictâ filiâ nostrâ exierint, de nobis & heredibus nostris in liberum maritagium; Salvis conventionibus inter nos & ipsum de terrâ & eodem maritagio factis, &c. Dated Anno Sexto Johannis Regis, 1204. See the Deed at large in the Advertisement to the Reader, at the end of my book, stiled Sir Thomas Manwaring's Law-Cases mistaken, pag. 53. transcribed from the Record in the Tower of London.

2. Another see in my book of Antiquities, pag. 152. wherein it is Covenanted that *John the Scot*, Nephew of *Randle*, Earl of *Chester* and *Lincoln* by his eldest Sister, shall Marry *Helen*, Daughter of *Lewellyn*, Prince of *North-wales*; and that the said *Lewellyn* shall give to the said *John* in Free-Marriage all the Mannor of *Budford* in *Warwick-shire*, and the Mannor of *Suttebele* in *Worcester-shire*, cum omni.

omnibus Pertinentiis, sicut Dominus Johannes Rex ea illi dedit in libero maritagio &c. This Deed was made about 6. Hen. 3. Anno Christi. 1222. Now that the said Joan was a Bastard-Daughter of King John, take these several Authorities, Vincent upon Brook, pag. 204. Speed's History, p. 518. Stow's Annals Augmented by Howes, pag. 167, 168. Polychronicon Translated into English by Trevisa, lib. 7. cap. 33. Cambdens Brittainia in Shropshire, pag. 453. also Daniel and Fabian, and Milles Catalogue of Honour, and Sir Richard Baker's History, who do all call her base Daughter of King John; and no Author at all calls her Lawful Daughter, or reckoneth her among the Daughters by any of his Wives; some of them say she was begot by King John on Agatha de Ferrars.

And therefore these Deeds and Charters which concerned so great Persons (whom we cannot suppose to be without Learned Council about them) are clear Precedents,

showing how the Law was then taken, and were good Deeds, conveying the Lands with Bastards in Free-marriage in those Ages, which Lands were quietly enjoyed accordingly, and nothing can be said against them: Many other Precedents of like nature in those ancient Ages, might without doubt, upon diligent search and enquiry be found out.

For as much then as it appears by the words of *Glanvil*, that Lands might then be given with any Woman whomsoever in Free-marriage, and no Bastards then excepted or disallowed by the Law, either in *Glanvil* or *Bracton*, and that clear Precedents of those elder Ages do prove and show, that Lands did then usually pass in Free-marriage, as well with Bastards, as Lawful Daughters; and that all Deeds by the rule of Law, are to be construed and understood according to the time when they were made: How can a Deed of Services, given *in libero maritagio* (in the Reigo
of

of *Henry the Second*) with one justly suspected to be a Bastard, be a sure Argument, or any Argument at all, to prove her Legitimate?

Wherefore it is very evident, that in those elder Ages (as the Law was then taken in the Reign of King *John*, and upwards) Lands lawfully might, & usually did pass in *libero maritagio* with Bastards, as well as with no Bastards, howbeit at this day our Law will not permit the same.

F I N I S.

E R R A T A:

Page 7, line 16, ~~and~~ diseased for diseased;
 p. 8, l. 12, you for he, p. 14, l. 10, Index
 for Judex; p. 14, l. 19. The, to be expunged;
 p. 15, l. 9, Doterium for Dotarium; p. 30, l. 1,
Capitalis for *Capitulis*; p. 48, last line, man for
 men; p. 40, l. 22, 23. this this, expunge the one
 of them; p. 58, l. 19, 20. man man, expunge the
 one of them; p. 42, mispaged for 59; p. 76. in
 the margent, *Seaccarium* for *Seaccarium*.